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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 JAY HOTRUM,

11 Plaintiff,

12 v.

13 EDGEWATER GAMING, LLC,

14 Defendant.

Case No. 2:15-cv-00775-LDG (GWF)

15
16 **ORDER**

17 In his complaint, plaintiff Jay Hotrum alleges that on November 2, 2013, he was in
18 the Edgewater Hotel Casino when security personnel prevented him from leaving, then
19 took him down to the floor, placed him in handcuffs, and detained him. He seeks damages
against defendant Edgewater Gaming, LLC, the owner of the hotel.

20 Edgewater Gaming removed this action, asserting that this Court has diversity
21 jurisdiction as the parties are citizens of different states and the amount in controversy
22 exceeds \$75,000. Hotrum moves to remand (#8), which Edgewater Gaming opposes
23 (#14). The Court will deny the motion.

24 Edgewater Gaming moves for summary judgment (#28) on all claims. Hotrum
25 responded (#30), conceding that he is abandoning most of his claims but that issues of
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1 material fact remain whether the security personnel used excessive force in detaining him.
2 The Court will grant Edgewater Gaming's motion.

3 Motion to Remand

4 This Court must first rule on Hotrum's motion to remand and determine whether this
5 Court has subject matter jurisdiction over this action. *McCabe v. Gen. Foods Corp.*, 811
6 F.2d 1336, 1339 (9th Cir. 1987).

7 Removal jurisdiction under 28 U.S.C. §1441(a) gives federal district courts
8 jurisdiction over "any civil action brought in a State court of which the district courts of the
9 United States have original jurisdiction." 28 U.S.C. §1441. Federal district courts have
10 original jurisdiction over civil actions in diversity cases "where the matter in controversy
11 exceeds the sum or value of \$75,000" and where the matter is between "citizens of
12 different states." 28 U.S.C. § 1332(a). "Section 1332 requires complete diversity of
13 citizenship; each of the plaintiffs must be a citizen of a different state than each of the
14 defendants." *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001).
15 "[R]emoval statutes are construed restrictively, and any doubts about removability are
16 resolved in favor of remanding the case to state court." *McCaa v. Massachusetts Mut. Life
17 Ins. Co.*, 330 F.Supp.2d 1143, 1146 (D. Nev. 2004). A removing party always has the
18 burden of establishing that removal is proper. See *Gaus v. Miles, Inc.*, 980 F.2d 564, 566
19 (9th Cir.1992). Notwithstanding removal, a plaintiff may move to remand the removed
20 action to state court on the ground that the federal court lacks subject matter jurisdiction.
21 28 U.S.C. § 1447(c).

22 Hotrum does not dispute that he and Edgewater Gaming are citizens of different
23 states.

24 Hotrum disputes whether Edgewater Gaming has sufficiently established that the
25 amount in controversy exceeds \$75,000. He argues that his complaint "seeks damages in
26 excess of \$10,000, and that Edgewater Gaming's petition for removal "baldly asserts" that

1 his claim for punitive damages exceeds \$75,000. He suggests that this is “a claim without
2 any measure of substantiation,” and that Edgewater Gaming did not outline, in its petition,
3 the underlying value of his damages. Thus, he concludes, Edgewater Gaming did not
4 meet its burden of showing damages would exceed \$75,000.

5 The Court disagrees. In its petition, Edgewater Gaming expressly noted that Hotrum
6 alleged injuries resulting in a permanent partial disability and that he prayed for damages in
7 excess of \$10,000 for past medical care and treatment, and in excess of \$10,000 for future
8 medical care and treatment, and in excess of \$10,000 for past and future pain, suffering,
9 anxiety, and general damages, and in excess of \$10,000 for past loss of income and
10 earning capacity, and in excess of \$10,000 for future loss of income and earning capacity.
11 Edgewater Gaming further noted Hotrum prayed for an unstated sum for attorneys’ fees
12 and costs of suit. Finally, Edgewater Gaming noted Hotrum’s request for punitive or
13 exemplary damages in excess of \$10,000. As Edgewater Gaming noted in its opposition, it
14 specifically pointed out, in its petition for removal, that Hotrum had expressly prayed for
15 damages in excess of \$60,000 in his complaint.

16 In contrast to the removing party in *Gaus*, Edgewater Gaming did not “simply allege[]
17 that ‘the matter in current controversy exceeds the sum of’” \$75,000. 980 F.2d at 557.
18 Rather, Edgewater Gaming pointed out that Hotrum had six separate prayers for damages
19 in excess of \$10,000 (for a total in excess of \$60,000), including damages for future
20 medical costs and lost income, and that in light of the allegations of Hotrum’s complaint,
21 and his request for punitive damages, it was likely that Hotrum would ask a jury to award
22 him damages in excess of \$75,000. Edgewater Gaming met its burden of identifying the
23 allegations of Hotrum’s complaint that would support a determination that he was seeking
24 damages in excess of \$75,000. Accordingly, the Court denies Hotrum’s motion to remand.

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1 Motion for Summary Judgment

2 In considering a motion for summary judgment, the court performs “the threshold
3 inquiry of determining whether there is the need for a trial—whether, in other words, there
4 are any genuine factual issues that properly can be resolved only by a finder of fact
5 because they may reasonably be resolved in favor of either party.” *Anderson v. Liberty*
6 *Lobby, Inc.*, 477 U.S. 242, 250 (1986); *United States v. Arango*, 670 F.3d 988, 992 (9th Cir.
7 2012). To succeed on a motion for summary judgment, the moving party must show (1)
8 the lack of a genuine issue of any material fact, and (2) that the court may grant judgment
9 as a matter of law. Fed. R. Civ. Pro. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322
10 (1986); *Arango*, 670 F.3d at 992.

11 A material fact is one required to prove a basic element of a claim. *Anderson*, 477
12 U.S. at 248. The failure to show a fact essential to one element, however, “necessarily
13 renders all other facts immaterial.” *Celotex*, 477 U.S. at 323. Additionally, “[t]he mere
14 existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient.”
15 *United States v. \$133,420.00 in U.S. Currency*, 672 F.3d 629, 638 (9th Cir. 2012) (quoting
16 *Anderson*, 477 U.S. at 252).

17 “[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after
18 adequate time for discovery and upon motion, against a party who fails to make a showing
19 sufficient to establish the existence of an element essential to that party’s case, and on
20 which that party will bear the burden of proof at trial.” *Celotex*, 477 U.S. at 322. “Of
21 course, a party seeking summary judgment always bears the initial responsibility of
22 informing the district court of the basis for its motion, and identifying those portions of ‘the
23 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
24 affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material
25 fact.” *Id.*, at 323. As such, when the non-moving party bears the initial burden of proving,
26 at trial, the claim or defense that the motion for summary judgment places in issue, the

1 moving party can meet its initial burden on summary judgment "by 'showing'—that is,
2 pointing out to the district court—that there is an absence of evidence to support the
3 nonmoving party's case." *Id.*, at 325. Conversely, when the burden of proof at trial rests
4 on the party moving for summary judgment, then in moving for summary judgment the
5 party must establish each element of its case.

6 Once the moving party meets its initial burden on summary judgment, the non-
7 moving party must submit facts showing a genuine issue of material fact. Fed. R. Civ. Pro.
8 56(e); *Nissan Fire & Marine Ins. Co. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1103 (9th Cir.
9 2000). As summary judgment allows a court "to isolate and dispose of factually
10 unsupported claims or defenses," *Celotex*, 477 U.S. at 323-24, the court construes the
11 evidence before it "in the light most favorable to the opposing party." *Adickes v. S. H.
12 Kress & Co.*, 398 U.S. 144, 157 (1970). The allegations or denials of a pleading, however,
13 will not defeat a well-founded motion. Fed. R. Civ. Pro. 56(e); *Matsushita Elec. Indus. Co.
14 v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). That is, the opposing party cannot
15 "rest upon the mere allegations or denials of [its] pleading" but must instead produce
16 evidence that 'sets forth specific facts showing that there is a genuine issue for trial.'"
17 *Estate of Tucker v. Interscope Records*, 515 F.3d 1019, 1030 (9th Cir. 2008) (quoting Fed.
18 R. Civ. Pro. 56(e)).

19 Background

20 In his complaint, Hotrum alleged that, on November 2, 2013, he was a patron at the
21 Edgewater Hotel Casino when security personnel informed him that there had been an
22 incident on the River Walk, and that he and other guests needed to remain in place while
23 the incident was investigated. He further alleged the security personnel blocked the exits,
24 preventing him and other patrons from leaving. After thirty minutes, he informed the
25 security personnel that he needed to leave in five minutes. After five minutes had passed,
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1 he got up to leave and “without warning or provocation, [Edgewater Gaming’s] security
2 personnel took down [Hotrum] to the floor and placed him in handcuffs.”

3 Hotrum further alleged that, while detained, he informed the security personnel that
4 the handcuffs were injuring his wrists, and asked that they be loosened. In response, the
5 security personnel re-tightened the handcuffs, causing further injury.

6 Based on these allegations, Hotrum alleged claims for assault and battery, negligent
7 security, negligent and intentional infliction of emotional distress, negligent use of
8 excessive force, and negligent hiring, training, supervision and retention of Edgewater
9 Gaming’s employees.

10 In contrast to Hotrum’s complaint, the parties have presented a significantly different
11 series of events to the Court, primarily because the events in question were recorded on
12 video surveillance. Hotrum was involved in an incident on the River Walk. Security
13 personnel at the Edgewater Hotel Casino received a call from another casino seeking to
14 locate the individual who had been involved in the River Walk incident, and provided a
15 description matching Hotrum. At about 3:25 a.m., the Edgewater Casino Hotel security
16 personnel began video surveillance of Hotrum while he was seated at a bar with video
17 gaming machines.

18 The first interaction between security personnel and Hotrum occurred just before
19 3:35 a.m., as Hotrum began walking toward the casino’s entrance/exit doors. A short
20 distance before Hotrum would have reached the doors, a security person approached and
21 stopped him. Within a minute, security personnel directed Hotrum to a chair several feet
22 away, and he complied. (Contrary to his complaint alleging other patrons were also
23 detained, security personnel allowed an individual accompanying Hotrum to leave.) During
24 this time, a number of additional security personnel had arrived and were standing in
25 varying degrees of proximity to Hotrum. Hotrum concedes that the security personnel had
26 reasonable cause to stop and detain him.

1 Contrary to the allegations of the complaint, only one minute after sitting down, (and
2 just two minutes after first being detained), Hotrum suddenly left his chair and began
3 running toward the exit doors. Hotrum did not reach the doors before he was physically
4 apprehended by two security personnel. Contrary to the allegations of the complaint, the
5 security personnel did not take him to the ground. Rather, they turned him away from the
6 exit, moved him (while upright) a short distance toward a waist-high cart near a wall, over
7 which they bent him face-forward while bringing his arms behind him. With a third security
8 person, they handcuffed Hotrum, and within about 15 seconds from first touching Hotrum,
9 he was again standing upright. For a brief period, the third security person continued to
10 adjust the handcuffs, and then the security personnel began walking Hotrum to a holding
11 cell.

12 Within a minute of entering the holding cell, a security person checked the
13 handcuffs. Hotrum asserts, and the court accepts as accurate for purposes of this motion,
14 that the security person determined the handcuffs were so tight that he could not get his
15 pinky finger between the cuffs and Hotrum's wrists. The security person then loosened the
16 handcuffs.

17 On several occasions over the following hour, Hotrum complained that the handcuffs
18 were too tight and that his arms were hurting. Several times, the security personnel
19 responded by informing Hotrum that the handcuffs had been loosened as much as
20 possible. Several times, a security person physically checked the handcuffs and then
21 informed Hotrum that they were as loose as possible, including informing Hotrum that the
22 security person had fit his thumb in the cuffs. On one occasion, two security persons
23 removed the handcuffs entirely and then re-cuffed Hotrum. Following that occasion,
24 Hotrum complained that the cuffs were tighter than before, that his arms hurt worse, and
25 that he shouldn't have asked to have the cuffs adjusted. Hotrum also complained of an
26 injury to his knee, which he attributed to the incident on the River Walk.

1 Hotrum concedes that, based on this evidence, he cannot maintain his claims for
2 intentional or negligent infliction of emotional distress, and further concedes he cannot
3 maintain his claims for negligent hiring, training, and supervision. Hotrum argues, however,
4 that material issues of fact remain whether the security personnel used excessive force
5 either during the initial 15 seconds period in which they physically stopped and handcuffed
6 him, or in the following 15 seconds in which the third security officer continued to adjust the
7 handcuffs.

8 Analysis

9 In opposing Edgewater Gaming's motion for summary judgment, Hotrum asserts
10 that the following facts raise a triable issue of fact whether the security personnel used
11 excessive force in detaining him:

- 12 (1) because it took three men to secure Hotrum "even after he had succumbed to
13 detention at the hands of Edgewater,"
- 14 (2) because one of the security persons "manipulated the cuffs after they were
15 already secured and appeared to use his strength to tighten the cuffs on Mr.
16 Hotrum,"
- 17 (3) because "the cuffs had to be loosened in the holding room because they
18 were too tight," and
- 19 (4) because Hotrum had not shown or expressed evidence of pain in his wrist
20 before being restrained by the security personnel.

21 None of these assertions, either standing alone or considered cumulatively, raises a
22 triable issue of material fact whether the security personnel used excessive force in
23 detaining Hotrum.

24 Hotrum argues that the three security persons apprehended him after "he changed
25 his mind about fleeing." As Hotrum appears to concede, the video surveillance indicates
26 that he was attempting to flee. The video also shows that he changed his running stride

1 just prior to the first security person reaching him, though the video does not indicate the
2 reason for the change in stride. Hotrum's reason for changing his stride is irrelevant.
3 Rather, the relevant inquiry is whether the security persons' use of physical force in
4 response to these events (a detainee attempting to flee, who changes his stride
5 immediately prior to physical apprehension) was reasonable. Nothing on the video tape
6 suggests the use of force was not reasonable in light of the circumstances that Hotrum
7 created.

8 Hotrum argues that the third security person continued to manipulate the handcuffs
9 after they had already been applied. The argument rests on the premise that, prior to the
10 additional manipulation, no further manipulation of the handcuffs was required. Hotrum
11 has not offered any evidence to support this theory, and the video surveillance does not
12 offer any evidence supporting an inference that the third security person was engaging in
13 an unnecessary manipulation of the handcuffs.

14 Hotrum further argues that the third security person used his strength to tighten the
15 handcuffs. Hotrum has not identified any specific movement by the third security person,
16 nor can the Court identify any movement, that would support an inference that the security
17 person used his strength to tighten the handcuffs.

18 Hotrum's remaining argument is that the handcuffs were tightened to the point of
19 breaking his wrist bone. In support of this argument, he asserts that the video (1) does not
20 show him expressing any evidence of pain in his wrist prior to being placed in handcuffs,
21 (2) that within a minute of entering the holding cell (and about two minutes after the
22 handcuffs were first applied), a security person checked the tightness of the handcuffs,
23 determined they were too tight and loosened them, and (3) one month later, a doctor
24 determined that the bones in the wrist had been broken. While the medical evidence
25 submitted by Hotrum indicates a determination of a broken bone in the wrist, that evidence
26 does not establish that the bone was broken by the tightening of the handcuffs. Rather,

1 and at most, it establishes only that Hotrum reported to the doctor that he had been
2 handcuffed a month prior. Hotrum did not report to the doctor that, prior to being
3 handcuffed, he had been involved in an incident in which he had suffered a fall to the
4 ground. Accordingly, the medical evidence establishes only that Hotrum had a broken
5 bone in his wrist, which Hotrum attributed to being in handcuffs. Hotrum argues that “a
6 significant amount of force is required to tighten handcuffs to the point that displacement
7 and broken bones manifest in an individual’s wrist.”

8 Hotrum’s argument is, ultimately, self-defeating. If the absence of an injury is to be
9 inferred from the absence of evidence of pain when it would otherwise be displayed, such
10 absence of evidence must also be considered for the period both during and immediately
11 after the handcuffs were applied. The handcuffs were applied within 15 seconds of the
12 Hotrum’s initial physical apprehension, and further manipulated in the following 15
13 seconds. Hotrum does not direct the Court’s attention to any evidence on the video
14 surveillance suggesting any expression of pain in his wrist, much less the expression of
15 pain commensurate with the breaking of a bone, while he was being handcuffed.

16 Neither does Hotrum direct this Court’s attention to any expression of pain in his
17 wrist while he was being walked to the holding cell. Nor does Hotrum direct this Court’s
18 attention to any expression of pain in his wrist while the security person was checking the
19 handcuffs by unsuccessfully attempting to get his pinky finger between cuff and wrist.
20 Rather, the only evidence that the handcuffs were too tight (regardless of whether the
21 handcuffs were causing pain) was not a statement or action by Hotrum. Rather, the
22 evidence is the recorded statement of the security person that he couldn’t get his pinky in,
23 and his subsequent loosening of the handcuffs.

24 The evidence submitted to the Court establishes that Hotrum’s first indication of any
25 pain did not occur until nearly two minutes after the cuffs had been loosened, and was not
26 made in connection with his wrists. Rather, after acknowledging an injury to his knee

1 during the incident on the River Walk, and while in the process of sitting on the bench,
2 Hotrum exclaimed, in a voice indicating a response to pain, "Ow, my knee hurts."

3 Hotrum did not utter his first verbal indication that his arms hurt until 10 seconds
4 after this, when he stated, "I'm okay with, I'm okay with whatever you guys are doing 'cause
5 I don't know why your doing it and I don't know why I'm here but my arms hurt right now
6 and I don't know why I'm here. Why am I here, dude? Who's in charge. Can I please
7 speak to who's in charge." This statement of pain was not in response to any application of
8 force to Hotrum's wrist. While Hotrum notes that he continued to express pain over the
9 next hour, and assuming he was expressing the pain of a broken bone, nothing in his
10 expressions permits any inference as to when the injury occurred.

11 Hotrum's further argument that a significant amount of force would be required to
12 tighten a handcuff to the point of breaking a wrist bone only serves to further weaken his
13 theory. Accepting that a significant force would be required to break his wrist bone by the
14 tightening of handcuffs, Hotrum does not offer any explanation how handcuffs could be
15 tightened with sufficient force to break a bone but without causing a contemporaneous
16 expression of pain.

17 Further, Hotrum has not raised a triable issue of fact even if the Court assumes that
18 his wrist was broken during the 30 seconds in which he was physically apprehended and
19 handcuffed by defendant's security personnel. A finding that a use of force resulted in an
20 injury does not establish that the force used was excessive. When considered in context, a
21 reasonable use of force can result in an injury. The context of Hotrum's apprehension and
22 handcuffing was recorded by video surveillance, and that recording lacks any indication
23 that the force used by the security personnel was excessive to the circumstances, even if
24 that use of force resulted in a fractured wrist bone. Nothing in the video suggests that the
25 security personnel used a level of force beyond that necessary to restrain and handcuff an
26 individual who just attempted to flee from them.

1 Accordingly, for good cause shown,

2 THE COURT **ORDERS** that Jay Hotrum's Motion to Remand (#8) is DENIED;

3 THE COURT FURTHER **ORDERS** that Edgewater Gaming, LLC's Motion for

4 Summary Judgment (#28) is GRANTED. The Clerk of the Court shall enter judgment in

5 favor of defendant Edgewater Gaming and against plaintiff Jay Hotrum. Plaintiff Jay

6 Hotrum shall take nothing on his claims; defendant Edgewater Gaming is awarded its costs

7 and fees against plaintiff Jay Hotrum.

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9 DATED this 31 day of March, 2016.

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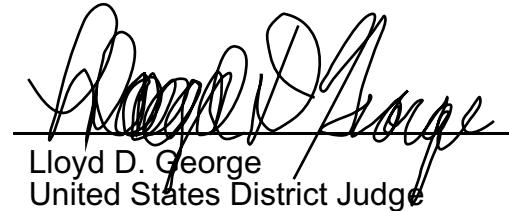
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Lloyd D. George
United States District Judge